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22 UNITED STATES DISTRICT COURT
23 NORTHERN DISTRICT OF CALIFORNIA

24 JOANNE BIERNACKI,

25 Plaintiff,

26 v.

27 TARGET CORPORATION and DOES 1 TO
28 200,

Defendants.

No. 4:18-CV-07381-DMR

*[Superior Court of California, County of
Alameda, Case No. RG18896144]*

**DECLARATION OF AIMEE G. HAMOY
IN SUPPORT OF TARGET
CORPORATION'S MOTION FOR
SUMMARY JUDGMENT**

DATE: September 26, 2019

TIME: 1:00 p.m.

COURTROOM: 4

JUDGE: Hon. Donna M. Ryu

Complaint filed: March 8, 2018

22 I, AIMEE HAMOY, declare:

23 1. I am an attorney licensed to practice before all courts in the State of California. I
24 am a partner with the law firm of Burnham Brown, counsel for Defendant TARGET
25 CORPORATION ("Target") in this action. The following is based on my personal knowledge
26 and, if called as a witness, I could and would testify thereto.

27 ///

2. A true and correct copy of pertinent portions of the deposition transcript of Plaintiff Joanne Bernacki, taken on December 4, 2018, is attached as **Exhibit 1**.

3. A true and correct copy of pertinent portions of the deposition transcript of Megan Mendenhall, taken on July 9, 2019, is attached as **Exhibit 2**.

4. A true and correct copy of pertinent portions of the deposition transcript of Plaintiff Theresa Ruslender, taken on July 9, 2019, is attached as **Exhibit 3**.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on January 30, 2019.

/s/ Aimee G. Hamoy
AIMEE G. HAMOY

4821-8998-3881, v. 1

EXHIBIT 1

JOANNE M. BIERNACKI
JOANNE BIERNACKI vs TARGET

December 04, 2018

1

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

JOANNE BIERNACKI,

Plaintiff,

vs.

TARGET CORPORATION; AND
DOES 1 TO 200,

Defendants.

No. RG18896144

DEPOSITION OF

JOANNE M. BIERNACKI

December 4, 2018

11:15 AM

1901 Harrison Street

Fourteenth Floor

Oakland, California

M. GABRIELA OJEDA CSR No. 11221

JOANNE M. BIERNACKI
JOANNE BIERNACKI vs TARGET

December 04, 2018
31

1 A Yes.

2 Q Okay.

3 MR. FETTO: Just to make it easier for you,
4 we're not making any claim of any damage to the babies
5 as a result of this accident.

6 Is that fair to say?

7 THE WITNESS: Yes, that's fair to say. That's
8 correct.

9 MR. FETTO: So that will cut down a little
10 bit.

11 MS. HAMOY: Thank you.

12 BY MS. HAMOY:

13 Q Can you tell me about what time you arrived at
14 Target on March 12, 2016.

15 A I would estimate between 9:00 and 11:00 AM.

16 Q Had you gone anywhere before going to the
17 store?

18 A No, I believe I came straight from home.

19 Q Did you have anybody with you when you came to
20 the store?

21 A My four-year-old daughter, Ruby Biernacki.

22 Q And what's her date of birth?

23 A 3/17/2011.

24 Q Okay. So you said you went to Target straight
25 from your house; is that correct?

JOANNE M. BIERNACKI
JOANNE BIERNACKI vs TARGET

December 04, 2018
34

1 little bit sturdier. They have cushion support and
2 grip on the bottom.

3 Q Do you still have those sandals?

4 A I believe so.

5 Q What did you do when you first entered the
6 Target store?

7 A I got a cart.

8 Q Where did you get the cart from?

9 A Once you enter the front on the left, there
10 are a bunch of carts lined up. So from there.

11 Q And was your daughter with you at that time?

12 A Yes.

13 Q Did you have a purse or anything that you
14 carried with you into the store?

15 A I don't carry a purse often. I usually just
16 carry my wallet.

17 Q Do you think you had your wallet with you at
18 that time?

19 A Yes.

20 Q Okay. Well, do you remember getting a
21 shopping cart?

22 A Yes.

23 Q And what happened after you got the shopping
24 cart?

25 A I walked through the main entrance area, and I

JOANNE M. BIERNACKI
JOANNE BIERNACKI vs TARGET

December 04, 2018
35

1 made a left.

2 MR. FETTO: So you were pushing a cart at this
3 time?

4 THE WITNESS: Yes. And I would say within
5 less than a minute the fall happened. I mean, it was
6 very close to the entrance. So the front entrance has
7 carpet and then you turn left and then you are on
8 the -- so I was pushing the cart the whole time, and I
9 went towards the left.

10 BY MS. HAMOY:

11 Q So when you turned your shopping cart towards
12 the left, was that the point at which you slipped or --

13 A Not exactly. I would say a few seconds later,
14 so a little bit further down the aisle.

15 MR. FETTO: Make sure you wait for her to
16 finish her questions before you give an answer.

17 THE WITNESS: Okay.

18 MR. FETTO: You will know what she's going to
19 ask before she gets to the question, and in modern
20 society, people are cutting each other off all the
21 time. But that court reporter can only take down one
22 person at a time, and so in deference to her fingers
23 wait for her to finish, give a little pause so I can
24 object, and then give your answer.

25 THE WITNESS: Okay.

JOANNE M. BIERNACKI
JOANNE BIERNACKI vs TARGET

December 04, 2018
37

1 sunglasses at the time?

2 A No.

3 Q Do you usually wear glasses or sunglasses?

4 A No.

5 Q After you took about seven steps, what did you
6 feel happen?

7 A I felt my right foot sliding on something and
8 my left foot going back behind me. I was literally
9 doing the splits, and it was a motion that I couldn't
10 stop. Like I knew I was going down when it was
11 happening, and there was nothing I could do to stop it.

12 Q When you say the splits, do you mean with your
13 right foot sliding forward and your left foot going
14 behind you like in a lunge position?

15 A Yes.

16 Q Was there anybody else near you at the time
17 that you felt your right foot sliding other than your
18 daughter?

19 A No.

20 Q Were there any other customers that you saw
21 prior to your right foot sliding?

22 A No.

23 Q Do you know why your right foot was sliding?

24 A At the moment I did not.

25 Q Did you learn later why your right foot

JOANNE M. BIERNACKI
JOANNE BIERNACKI vs TARGET

December 04, 2018
38

1 started sliding?

2 A Yes. When I was on the floor, my butt hit the
3 floor at a certain point after my legs were split, and
4 I saw water on the floor.

5 Q Where did you see the water?

6 A It was in front of me, not behind me, and I
7 recall it being to the left of me by the time I was
8 placed on my bottom. So like I'm facing you here
9 (indicating) I think it was right in front of me not
10 too far away.

11 Q Could you touch the water you saw with your
12 hand?

13 A Yes.

14 Q Did you see where the water had come from?

15 A No.

16 Q Did you see any container or item that you
17 think could have been the source of the water?

18 A No, not that I recall.

19 Q How much water did you see?

20 A I can kind of show you with my hands
21 (indicating) and explain that it was maybe about three
22 inches across and one inch down.

23 Q Was that the size of like a small puddle that
24 you saw, the three inch by five inch? Would that be a
25 fair description?

JOANNE M. BIERNACKI
JOANNE BIERNACKI vs TARGET

December 04, 2018
39

1 A Yes.

2 Q Was there any liquid around other than that
3 water that you saw?

4 A No.

5 Q Do you have any idea how long that water was
6 there?

7 A No.

8 Q Prior to you feeling your right foot sliding,
9 did you see any Target employees in the area?

10 A Not that I was paying any particular attention
11 to, no.

12 Q Did your daughter have anything in her hands
13 when she came into the store?

14 A No, not that I recall.

15 Q Did she have anything in her hands at the time
16 you felt your right foot sliding?

17 A No, not that I recall.

18 Q Was there anything in your shopping cart at
19 the time that you slipped?

20 A No, not other than my wallet and phone.

21 Q So you actually hadn't started shopping yet
22 correct?

23 A That's correct.

24 Q Was there a particular area of the store you
25 were planning to go to after you turned left with the

EXHIBIT 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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JOANNE BIERNACKI,

Plaintiff,

vs.

TARGET CORPORATION, AND
DOES 1-200,

Defendants.

No. C18-CV-07381-DMR

VIDEOTAPED DEPOSITION OF MEGAN MENDENHALL

Taken before ELIZABETH O'KANE, a Certified
Shorthand Reporter, License No. C-5678,
State of California

July 9, 2019

--oOo--

02:25:33 1 statement now. Okay. I want you to turn to your
02:25:44 2 statement. I think it's 5B. That's the interview you
02:25:51 3 gave. I'm just looking at --
02:25:53 4 A. Oh, okay. Sorry.
02:25:54 5 Q. This one, okay?
02:25:55 6 A. This one here.
02:25:56 7 Q. Okay. Is all the handwriting on here your
02:26:01 8 handwriting?
02:26:02 9 A. Yes.
02:26:03 10 Q. Okay.
02:26:04 11 A. With the exception of the guest's name at the
02:26:06 12 top. That is not my handwriting.
02:26:08 13 Q. Do you know who wrote that?
02:26:10 14 A. I do not know.
02:26:11 15 Q. Okay. It says here you were paged?
02:26:14 16 A. Yes.
02:26:15 17 Q. Okay. And then "List team members either
02:26:19 18 assigned or performing duties in this department or
02:26:23 19 adjacent departments." Do you see the word "Terry"?
02:26:26 20 A. Yes.
02:26:27 21 Q. And then "Disney"?
02:26:28 22 A. Yes.
02:26:28 23 Q. Okay. Who was Terry?
02:26:30 24 A. Theresa Ruslender.
02:26:32 25 Q. Ah, okay. And who is Disney?

02:26:35 1 A. He was the team member, Andrew Disney. We
02:26:38 2 called him Disney, but he no longer works for Target,
02:26:41 3 either.

02:26:42 4 Q. Okay. All right. It says you were not the
02:26:47 5 first to respond.

02:26:48 6 A. Correct.

02:26:48 7 Q. You didn't -- you didn't hear the incident.

02:26:52 8 A. Yeah, I did not.

02:26:53 9 Q. You didn't see the incident.

02:26:54 10 A. I did not.

02:26:55 11 Q. You didn't clean the floor.

02:26:57 12 A. I did not.

02:26:58 13 Q. Okay. You did place cones out? "Team members
02:27:04 14 who placed or cones or warned others of the condition"?

02:27:08 15 A. We -- I don't recall placing any cones out, but
02:27:10 16 we did keep people if -- any guests, just anyone from
02:27:14 17 going near her until she was comfortable, or to make
02:27:17 18 sure no one was near her, near the guest who was on --
02:27:20 19 who fell.

02:27:21 20 Q. "Team members in the area within 30 minutes
02:27:25 21 prior to the incident." You were not in the area 30
02:27:27 22 minutes prior to the incident.

02:27:28 23 A. No.

02:27:29 24 Q. Okay. So is it fair to say that you had no
02:27:31 25 idea what the condition of the floor was like before she

02:27:34 1 slipped?

02:27:35 2 A. Yes.

02:27:35 3 Q. Okay. All right. "Was the floor/ground

02:27:40 4 clean" -- well, "floor/ground clean and dry at the time

02:27:46 5 of the incident?" You wrote, "Yes."

02:27:48 6 A. Correct.

02:27:49 7 Q. You said you felt -- "I felt the area and saw

02:27:51 8 no debris on the floor."

02:27:52 9 A. Correct.

02:27:53 10 Q. Okay. Did you feel any oil on the floor?

02:27:55 11 A. I did not.

02:27:56 12 Q. Okay. So the floor had the common traction?

02:28:02 13 A. Yes.

02:28:02 14 Q. You were there before they brought the ice to

02:28:04 15 put on her knee?

02:28:05 16 A. Yes.

02:28:06 17 Q. Okay. Did anyone tell you about picking up any

02:28:08 18 sanitary wipes prior to the fall?

02:28:12 19 A. No.

02:28:12 20 Q. Did you ever talk to anyone about picking up

02:28:15 21 any sanitary wipes prior to the fall?

02:28:17 22 A. No.

02:28:17 23 Q. Okay. There are sanitary wipes at the front of

02:28:20 24 the store, right? That people can pull and wash --

02:28:23 25 clean their hands before they come in the store?

02:28:26 1 A. Correct.

02:28:26 2 Q. That's to hopefully keep down the flu?

02:28:30 3 A. Yes.

02:28:30 4 Q. Okay. Could you just read "Scene Observations"

02:28:38 5 for me?

02:28:39 6 A. "Describe overall observation of the scene"?

02:28:44 7 Q. Yes.

02:28:44 8 A. Okay.

02:28:44 9 MS. HAMOY: Read it slowly so the reporter can take

02:28:46 10 it down.

02:28:47 11 THE WITNESS: Okay. "Guest was on the ground with

02:28:48 12 one of her legs under the cart. She said she could not

02:28:51 13 get up and needed help."

02:28:53 14 MR. FETTO:

02:28:53 15 Q. Okay. Then read what the next -- describe the

02:28:59 16 guest's appearance.

02:29:01 17 A. "Flip-flops, skirt, black tank top. She said

02:29:05 18 her knee hurt too badly for her to stand up."

02:29:09 19 Q. Okay. And then it says -- I guess they want

02:29:14 20 guest attire again. Could you read what you wrote?

02:29:17 21 A. "Black tank top, flip-flops, long skirt."

02:29:21 22 Q. Okay. And then underneath that it says print

02:29:26 23 your name, "Megan Mendenhall"?

02:29:29 24 A. Yes.

02:29:30 25 Q. Okay. And then under "Title" is that "Senior

02:31:28 1 A. Okay. "I was headed up to Guest Service and
02:31:31 2 then I was flagged down by another team member and there
02:31:34 3 was a guest on the ground. She said she had fallen and
02:31:38 4 then she was telling us she was pregnant. So we -- her
02:31:43 5 leg was kind of caught underneath the cart, so we moved
02:31:46 6 the cart somewhere and then we helped her to sit up and
02:31:50 7 then just proceeded to call 911 and make sure she was
02:31:56 8 comfortable."

02:31:58 9 Q. Okay. Let's see. Okay. And then just read
02:32:12 10 the next paragraph if you could. It said -- you said,
02:32:14 11 "Oh" -- the question is, "Oh, did she say what she had
02:32:18 12 fallen on?" Just read from there.

02:32:20 13 A. "No, she didn't say, because when I got there I
02:32:24 14 did not see anything at all on the ground. So she
02:32:27 15 wasn't sure if she had slipped on really what. I didn't
02:32:32 16 see any water on the ground or anything she could have
02:32:36 17 slipped on. We did notice when we were taking care of
02:32:40 18 her that she appeared to just had a pedicure done so she
02:32:45 19 had some very thin flip-flops on, so I don't know if she
02:32:50 20 tripped on that or if there was something, but that
02:32:54 21 didn't appear to me that she had slipped on anything."

02:32:57 22 Q. Okay. Do you recall if when you got to the
02:32:59 23 area you took a look around to see if there was anything
02:33:03 24 she could have tripped on?

02:33:05 25 A. Yes.

EXHIBIT 3

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
--oOo--
JOANNE BIERNACKI,)
)
Plaintiff,)
)
vs.) No. C18-CV-07381-DMR
)
TARGET CORPORATION, AND)
DOES 1-200,)
)
Defendants.)
_____)

VIDEOTAPED DEPOSITION OF THERESA RUSLENDER

Taken before ELIZABETH O'KANE, a Certified
Shorthand Reporter, License No. C-5678,
State of California

July 9, 2019

--oOo--

12:07:13 1 cashiering and you're also -- you're also monitoring the
12:07:16 2 cashiers? No?

12:07:18 3 A. I'm not cashiering when I'm up running the
12:07:20 4 front.

12:07:20 5 Q. You're checking the floors.

12:07:22 6 A. I'm running this front back and forth to make
12:07:25 7 sure that guests are getting their proper checkouts and
12:07:31 8 guiding them to what check lane where there's not lines,
12:07:34 9 that kind of stuff. Checking and putting stuff away,
12:07:37 10 yes.

12:07:37 11 Q. And was it also your responsibility to check
12:07:40 12 the aisle where Joanne Biernacki fell?

12:07:43 13 A. Yes.

12:07:44 14 Q. Okay. And would you do that -- would you
12:07:46 15 walk -- would you be standing behind the cashier
12:07:49 16 counters when you did that?

12:07:51 17 A. These are the front of the check lanes. So
12:07:53 18 this is the front. This is the back of the check lanes.
12:07:56 19 I'm in front of them.

12:07:58 20 Q. Okay. So when you mean the front, you mean the
12:08:02 21 part of the checkout lane where the customer would go to
12:08:04 22 first.

12:08:05 23 A. Correct.

12:08:05 24 Q. Okay. So you'd be walking back and forth in
12:08:08 25 this area all the time, correct?

12:09:17 1 back up for the moment and talk about how you -- when
12:09:19 2 you first learned that there was an incident. This is
12:09:23 3 Mrs. Biernacki's fall.

12:09:27 4 What was your first indication that there was a
12:09:30 5 problem?

12:09:36 6 A. So I was standing about two, three feet away
12:09:40 7 from her.

12:09:41 8 Q. And what happened that made you think there was
12:09:43 9 a problem?

12:09:46 10 A. She had her daughter with her. Daughter's
12:09:48 11 running around. And she said "ow" as I watched her. I
12:09:56 12 mean, she was right behind me. Or like where the chair
12:10:01 13 is.

12:10:02 14 Q. Okay. So you were looking away from her when
12:10:05 15 you heard the "ow, "correct?

12:10:10 16 A. I kind of saw it from peripheral, you know,
12:10:13 17 my --

12:10:14 18 Q. It's a peripheral vision of her?

12:10:17 19 A. Yeah.

12:10:17 20 Q. Okay. So you knew there was someone off your
12:10:20 21 right shoulder. Okay?

12:10:21 22 A. Yes.

12:10:21 23 Q. And then you heard the word "ow," correct?

12:10:24 24 A. Yes.

12:10:25 25 Q. And then did you turn to look to see what was

12:29:02 1 A. Um-hum. Yes.

12:29:03 2 Q. Okay.

12:29:03 3 "Who was at the scene when you arrived?

12:29:06 4 Please list names.

12:29:09 5 "No, I was the first one on-scene."

12:29:11 6 A. Yes.

12:29:11 7 Q. Okay.

12:29:11 8 "Were the guest's clothes wet or

12:29:14 9 damaged?

12:29:14 10 "No, not at all.

12:29:17 11 "Was the ground clean and dry when you arrived

12:29:20 12 at the scene?"

12:29:21 13 You checked, "Yes, but there was one of the

12:29:24 14 sanitary wipes on the floor."

12:29:26 15 Correct?

12:29:27 16 A. Yes.

12:29:28 17 Q. But really, there were two or three, correct?

12:29:32 18 A. Yes.

12:29:33 19 Q. Okay. We're not -- we're just trying to get

12:29:39 20 the best record.

12:29:40 21 A. Right.

12:29:41 22 Q. You know.

12:29:41 23 A. But they weren't in the area of where she was

12:29:45 24 on the floor.

12:29:45 25 Q. Yes. You've described that.

12:29:48 1 A. Okay.

12:29:48 2 Q. I mean, I don't want to -- we can argue that
12:29:49 3 point later.

12:29:50 4 "Was merchandise, an object or store equipment
12:29:55 5 involved?"

12:29:55 6 And you put, "No."

12:29:57 7 But really, it was the sanitary wipe, like the ones
12:30:00 8 you find when you enter the store, correct?

12:30:02 9 A. No.

12:30:03 10 Q. It wasn't a sanitary wipe like you would find
12:30:06 11 at the store.

12:30:07 12 A. That wasn't involved in her fall.

12:30:09 13 Q. Okay. Okay. But it was -- that was the thing
12:30:15 14 you did find on the floor was something that was
12:30:19 15 distributed at the store at the front, correct?

12:30:23 16 A. The guests will take them if needed, yes.

12:30:26 17 Q. When you looked at the little -- did you have a
12:30:28 18 chance to look at the little girl after you saw the
12:30:30 19 fall?

12:30:30 20 A. Yes.

12:30:31 21 Q. Did she have anything in her hands?

12:30:33 22 A. That I don't recall.

12:30:34 23 Q. Okay. Did you see her before -- as you were
12:30:38 24 walking back and forth, did you see them enter the
12:30:41 25 store?